IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1494

RITA RAE SKINNER, A MINOR, BY VIRGINIA SKINNER, HER MOTHER AND NEXT FRIEND,

Plaintiff,

vs.

REED-PRENTICE DIVISION PACKAGE MACHINERY CO., A FOREIGN CORPORATION,

Defendant.

HINCKLEY PLASTIC, INC.,

Petitioner,

vs.

REED-PRENTICE DIVISION PACKAGE MACHINERY CO., A FOREIGN CORPORATION,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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MAY IT PLEASE THE COURT:

QUESTIONS PRESENTED.

Whether the Illinois Supreme Court, in adopting a rule of contribution among tort-feasors, based on their relative degree

of fault, and, in making its decision prospective as to others than petitioner, violated any federal constitutional right of petitioner.

OPINIONS BELOW.

The opinion of the Supreme Court of Illinois is reported in 70 Ill. 2d 1. That opinion reversed a decision of the Illinois Appellate Court reported in 40 Ill. App. 3d 99. An opinion of the Circuit Court of Cook County is unreported. Two related cases are reported in 70 Ill. 2d 41 and 70 Ill. 2d 47.

STATEMENT.

The petition for certiorari is frivolous in the extreme and should be denied.

The Illinois Supreme Court has held that there should be contribution among tort-feasors based upon their relative degree of fault.

In its supplemental opinion, on denial of rehearing, it considered suggestions by petitioner, respondent and *amicus curiae* regarding whether the decision should be given prospective operation only, and in what respect. It held, following two earlier decisions of that Court, that the decision in this case and two related cases would apply prospectively "to causes of action arising out of occurrences on and after March 1, 1978" (Pn. 13A).

It is so obvious that the petition presents no question for review by this Court that extensive comment is unnecessary. The Illinois Court has joined numerous other states in this country which have contribution among tort-feasors. In some states, the rule has been the result of legislative enactment, while in others, as in this case, the result of judicial decision.

Whether a state should, or should not, have contribution among tort-feasors presents no federal constitutional issue. Furthermore, the fact that the Illinois Supreme Court adopted

this rule for the first time in this case does not deprive petitioner of any federal constitutional right. Petitioner contends that the rule imposes liability upon it "retroactively." However, this is a commonplace consequence of tort decisions which lay down new tort doctrines and does not involve any federal constitutional question.

Petitioner's other complaint is that it is being deprived of constitutional rights because the decision is made prospective as to other persons. Ever since *Great Northern Railway Co.* v. *Sunburst*, 287 U. S. 358 (1932), it has been settled that a Court may declare that a particular decision shall operate prospectively only. "* * * [W]e are neither required to apply, nor prohibited from applying, a decision retrospectively, * * *" *Linkletter* v. *Walker*, 381 U. S. 618, 629 (1965).

Petitioner's complaint seems to be that the Illinois Court should have made the decision prospective to it as well, and thus deny respondent the fruits of its victory.

Virtually all Courts give the litigant, who has succeeded in getting a new rule established, the benefit of his success in the case in which the new rule was established. *Cf.* this Court's decision in *Simpson* v. *Union Oil Co.*, 377 U. S. 13 (1969), where this Court reversed lower court decisions denying plaintiff the fruits of his successful litigation. A state Court's determination that a litigant is entitled to the benefit of his success, but that, as to others, its decision shall operate prospectively only, presents no federal constitutional issue.